

**Response to DG-SANCO consultation paper on the
Review of the Timeshare Directive**

by the
**Timeshare Consumers Association
(TCA)**

Response is added – **in Ariel font** – to the original questions.

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I. MAIN ISSUES AT STAKE

1. The scope: Timeshare-like products

Problems

The definition of timeshare in the Directive is wide¹, and as indicated can be easily circumvented.

As timeshare-like products (as defined in section V) are not covered by the definitions of the Directive, the purchasers are not entitled to have the benefits (minimum information, cooling-off period, ban of deposits, language requirements etc) that the Directive affords to the purchaser of the classic timeshare rights.

Questions:

a) *Do you agree with the description of the problems?*

Yes.

b) *Should the scope be extended to cover the products described above?*

Yes

c) *If yes, which of the provisions of the Directive should be applicable?*

All

d) *What would be the best way of producing 'future-proof' legislation and avoiding circumvention of the timeshare legislation?*

By redefining "timeshare" as "the use of two or more discrete periods of holiday accommodation"

e) *Do you see any need to harmonise the legal nature of timeshare? If so, which variant would you support?*

Yes. The legal nature of timeshare should be harmonised throughout the EU based upon "real estate" rights. However such a structure may not be possible under existing laws in a number of countries, including the UK.

2. The scope: Travel discount clubs

Problems

In addition to the general problems described in section VII and that these products fall outside the scope of the Directive, consumers experience problems because there are no underlying real property assets, and/or no upfront agreement with providers of transport

¹ Pursuant to the first indent of Article 2, Directive 94/47/EC applies to "any contract or group of contracts concluded for at least three years under which, directly, or indirectly, on payment of a certain global price, a real property right or any other right relating to the use of one or more immovable properties for a specified or specifiable period of the year, which may not be less than one week, is established or is the subject of a transfer or and undertaking to transfer".

or accommodation services. The discounts and offers made available to consumers will depend on the trader's ability to contract "good deals" to be offered to the members. According to the complaints received, these companies do not generally have the financial capacity and/or reputation needed to procure such contracts. They often are not able to honour the promises made, and if they go bankrupt the consumers lose all the money paid. Please refer also to the questions under point 7.

Questions:

a) *Do you agree with the description of problems?*

Yes – but we consider the definition "Travel Discount Clubs" inaccurate as these clubs primarily offer accommodation and only offer travel as a secondary service. Thus they should be referred to as "holiday clubs"

b) *Should the scope of the Directive be extended to cover travel discount clubs?*

Yes.

c) *If yes, how should these products be regulated and which of the provisions of the Directive should be applicable to them?*

All of the provisions of the Timeshare Directive should apply

d) *If not, do you think that these products should better be regulated in the context of the package travel directive?*

No. Principally because these products involve a very large advance payment.

3. The scope: Resale and exchange of timeshare and certain other related contracts.

Problems

Resale

Consumers may wish to resell their timeshare or timeshare-like product for different reasons (e.g. change of preferences regarding vacation, disappointment that the product does not live up to the promises in the sales presentations, declining standards of accommodation or increasing annual costs).

The resale market for timeshare and timeshare-like products in Europe is not very well developed. This has led to a market for scams, consumers wishing to sell being the targets of rogue traders. Aggressive practices are common. A substantial part of resale activity is initiated by a resale company contacting consumers who own a timeshare, offering to resell and promising a profit, sometimes falsely claiming to have a buyer at hand. Complaints relate to fees requested upfront and no buyers being found in the end. There are also numerous examples of consumers being tricked into buying an additional timeshare or timeshare-like product, the resale companies arguing that it would be easier to sell the two weeks together.

The Directive and national legislation do not generally cover the activities of resale companies, who are selling as an agent of a private seller.

Exchange schemes

The possibility of joining an exchange scheme is often used in the marketing of timeshare and timeshare-like products as a positive argument. The major problems seem to be related to “overselling” of the advantages and the possibilities, leaving consumers disappointed because the requested accommodation is not available, the timeshare/timeshare-like product they have is not of sufficient value to be exchanged for the “5 star luxury resort” shown in the marketing, or with unexpected high costs related to exchange, having to pay annual membership fees as well as fees related to search and use of exchange.

Other related contracts

Consumers also experience problems with other contracts which are related to or marketed in connection with timeshare or to timeshare owners. Two examples of such products, “upgrading” and “cash-back schemes”, are described under section V.

Questions:

a) *Do you agree with the description of the problems?*

1. **Resale. The main cause of the very weak resale market is the lack of natural demand for timeshare resulting from the collapse in consumer confidence in the product.**
2. **Exchange. The main problem is the failure of selling agents to properly describe the availability of the exchange services to consumers. In addition there is also a suspicion that some products have been oversold.**

b) *Do the lack of regulation at Community level of resale and other timeshare-related contracts constitute a consumer protection lacunae?*

Yes.

c) *Would you support EU regulation of the marketing and the contracts of exchange and resale? If yes, which aspects should be regulated (e.g. duty to disclose, right of withdrawal)?*

Yes, in exactly the same way as all timeshare products should be sold.

1. **Rights of withdrawal should be clearly laid out on the Purchase Agreement alongside the point at which the purchaser signs. The requirements of the UK Timeshare Act (amended in 2001) provide an effective model for this.**

2. **Full, written disclosure of availability should be obligatory**

d) *Do you think other categories of contracts, such as cash-back schemes and upgrading should be regulated? If yes, how?*

Yes. All schemes associated with the purchase of timeshare (as newly defined) should be regulated in exactly the same way as a timeshare purchase.

4. Information requirements and language

Problem: Information requirements

The Annex of the Directive contains an extensive list of information that must be included in the prospectus and the contract.

Many complaints relate to omission of material information that the consumer needs in order to make an informed decision. For the products that are not covered by the Directive, there is no legal obligation to provide the information listed in the Annex in a prospectus and the contract. Many complaints also relate to what is perceived as unintelligible contracts and unfair contract terms. Examples of such terms are unreasonable maintenance fees, increasing after an initial period and those regulating the way the resorts are managed and how decisions are taken.

Questions:

a) *Do you agree with the description of the problems?*

Yes.

b) *Do the divergent information requirements enshrined in national timeshare laws create confusion for consumers and increase compliance costs for business?*

Yes. But full harmonisation would resolve this.

c) *Do you think that the information in the list annexed to the Directive needs to be updated? If so, please explain how.*

Yes. Please see TCA proposals for a new Timeshare Directive

d) *Given the large amount of pre-contractual information, how could it be ensured that important information (e.g. on the right of withdrawal) is communicated to consumers effectively?*

The purchase agreement should contain all the required information

Problem: Language (pre-contractual information, contract, post-contract)

The Directive establishes language requirements for the pre-contractual information (prospectus) and the contract, to ensure that the consumer will get the information in a language that he or she understands. The drafting of the provision of the Directive is unnecessary complex², which is reflected in the way transposition measures vary and their lack of clarity.

Given the complexity of the contracts and the significant financial commitment for consumers, it is essential that consumers have the possibility to understand the contents

² Article 4 second indent: “the contract and the document referred to in Article 3(1) are drawn up in the language or one of the languages of Member State in which the purchaser is resident or in the language or one of the languages of the Member State of which he is a national which shall be an official language or official languages of the Community, at the purchaser’s option. The Member State in which the purchaser is resident may, however, require that the contract be drawn up in all cases in at least its language or languages which must be an official language or official languages of the Community, and – the vendor provides the purchaser with a certifies translation of the contract in the language or one of the languages of the Member States in which the immovable property is situated which shall be an official language or official languages of the Community.”

of the contract and the obligations undertaken. This is also true for information regarding decisions on management or administrative fees during the contract. For the consumer, it is also important to know in which language(s) the company can handle queries and complaints.

Questions:

a) *Do you agree with the description of the problems?*

Yes.

b) *How can the provision on language of the contract and the prospectus be simplified?*

All documents should be in the chosen language of the buyer (provided that it is an EU language). The selected language should be include in the purchase agreement.

c) *Should the consumer also be given the right to have all timeshare-related correspondence (not only the prospectus and the contract) in a language he/she is familiar with? If yes how should the choice of language be determined?*

Yes. See b) above

d) *Alternatively, should the trader be obliged to inform the consumer upfront about the language(s) that will be used post-sale?*

No. See above

5. Right of withdrawal

The Directive provides for a cooling-off period of at least 10 calendar days during which the consumer can withdraw from the contract, without giving any reasons and without penalties. This period is extended to up to 3 months and 10 days if not all the information requirements in the Directive are fulfilled.

Most Member States have adopted a 10 days cooling-off period, but a number of Member States have adopted a cooling-off period of 14 or 15 days. In addition, France requires that the offer should be maintained for at least 7 days, and only then starts the 10 days cooling-off period.

Consumer stakeholders have argued that the cooling off period is too short, in particular when consumers enter into contracts while on holidays.

Different length of the cooling-off period in different countries could be confusing for consumers and a burden for business. Also, the way the period is calculated, e.g. working days or calendar days and, prolongation in the case of public holidays vary. It is important to bear in mind that the length of the cooling-off period should be seen in connection with the ban on deposits. If the cooling-off period is short (e.g. 10 days), it is less of a burden for business to not receive the payment from the consumer until the cooling-off period has expired than if the cooling-off period is longer (e.g. 1 month).

Different rules on how to exercise the right of withdrawal (notification in writing, by registered letter, by notary etc) also causes problems to consumers.

Complaints also relate to traders not providing consumers with the relevant information about this right as prescribed by the Directive. The directive prescribes that the cooling-off period shall not start until all the information is provided. The sanctions for omitting information differ in Member States, as does the effectiveness of the rules.

Some argue that using the right of withdrawal is burdensome for the consumer, and that consumer protection should be strengthened by a reflection period before signing a contract.

Questions:

a) *Do you agree with the description of the problems?*

Yes.

b) *Do the divergent 'cooling-off' periods and the modalities for exercising the right of withdrawal enshrined in national timeshare laws create confusion for consumers and increase compliance costs for business?*

Yes.

c) *Would you support the introduction of one cooling-off period across the EU? If yes, how long should this period be, and what should be the starting point for the period?*

Yes. The period should start on the date (day one) when both parties have signed the purchase agreement. The period should run for 28 calendar days

d) *Should a compulsory reflection period before signing the contract be introduced?*

No, provided that a 28 day cooling off period was introduced.

e) *Would you support full harmonisation of the modalities for exercising the right of withdrawal across the EU? If yes, which would be the essential requirements?*

Yes. The essential requirements are:

- **Clear disclosure of the right to withdraw provided in the Purchase Agreement with the final date being stated.**
- **Clear explanation that a recorded delivery letter (or similar) posted not later than the 28th day will effect the cancellation.**

f) *What would be the appropriate legal effect of failing to provide important information (e.g. the right of withdrawal)?*

The agreement should be considered null and void and the trader should be charged with a criminal offence.

6. Advance payments

Problem

Pursuant to Article 6 of the Directive, advance payments are banned during the cooling off period. The Member States have transposed this provision, although the consequences arising from infringements of the provision differ from country to country.

The timeshare industry argues that the ban on deposits should be lifted, as it hampers business, its negative effect has dissuaded international brand-name hotel chains from investing in timeshare and it triggers the creation and sale of products which fall outside of the scope of the Directive. Alternatives to a ban could be other mechanisms to protect funds, such as escrow accounts, trustee arrangements, third party guarantees, letters of credit etc.

Consumer stakeholders argue that a relaxation of the ban on deposits would in practice undermine the right of withdrawal. Obtaining reimbursement can prove difficult, in particular from rogue traders. The ban has proved to be an effective means of allowing purchasers to make an unencumbered decision about proceeding or cancelling the purchase. Also, if timeshare-like products are brought under the Directive, a ban would apply also to providers of timeshare-like products. A ban on deposits constitutes a clear rule, easy to understand for consumers, whereas if alternatives like allowing deposits paid to third parties were accepted, it would be difficult for consumers to judge whether the third party is reliable and independent from the seller.

Questions:

a) *Do you agree with the description of the problems?*

Yes

b) *Should the current rules banning deposits be amended? If yes, why and how?*

Yes. By banning all payments made in relationship to the Purchase Agreement.

7. Professional and financial requirements

Problem

Firstly, the business sector of timeshare and in particular timeshare-like products and travel discount clubs seem to attract many rogue traders. It also happens frequently that rogue traders change the company name whenever the ground starts to get too hot under their feet. Some stakeholders have suggested that a licensing system would facilitate control and improve compliance with consumer protection law and codes of conduct.

Secondly, numerous consumer complaints are related to the non-delivery of services promised. It is only when the timeshare concerns a property under construction that the Directive requires information about guarantees to be provided. But financial security might also be needed for the case of non-delivery or an eventual insolvency of the company, in particular as the vendor's services to a large extent is prepaid by the consumer and the fulfilment may extend over a very long period of time. The problem seems to be most acute in relation to the travel discount clubs, as described under V.

Thirdly, with the large number of companies that may be involved in a transaction, it is difficult for the consumer to know who turn to if something is wrong.

Finally, there are huge quality differences between the resorts and their amenities and infrastructures, and sometimes between different types of timeshare-weeks or user rights within one resort (e.g. classifications like "standard resorts", "gold crown resorts" etc).

Questions:

a) Do you agree with the description of the problems?

Yes.

b) Do you have examples of best practices at national level, addressing these problems?

No.

- the rogues are mostly operating fraudulently yet the police, especially in Spain, appear to take very little action against them
- the use of multiple companies appears to be designed to isolate a major company from the false statements etc. of its agents.
- We do not consider variation in resort quality a major problem as each consumer has different requirements and expectations. However we would support the introduction of an independent quality grading system similar to that applied in the hotel sector.

c) Do you consider a European licensing system to be a feasible option? If yes, how should this be organised?

No. Whilst we support the concept of a licensing system we consider that it would :-

- Take too long to establish
- Be too expensive to operate

d) If certain financial requirements and guarantees should be introduced, what should they cover and how should they be organised?

We do not consider that financial guarantees are a practical option. The cost of providing guarantees etc. would have to be passed onto the consumer in the selling price and this would further distance timeshare from its competition. All companies should be registered in an EU country.

8. Arbitration/redress

Problem

The Directive does not contain any provisions relating to redress for consumers. Consumer stakeholders report that in many cases consumers are being denied exercising the right of withdrawal and not being reimbursed monies.

The major part of disputes regarding timeshare, timeshare-like products and travel discount clubs seem to be of a cross-border nature, where the consumer and the company/companies involved in the transaction belong to different countries. The European Consumer Centres (ECC) provide information and assistance to consumers, and can also assist consumers by translating the complaints to the language of the Member State where a complaint can be dealt with, and forward the complaint to the competent out of court dispute resolution body, where such a body exists. The lack of out-of-court bodies dealing with complaints related to timeshare and timeshare-like products has been highlighted as a problem by ECCs and other consumer stakeholders.

Organisation for Timeshare in Europe (O.T.E.) has adopted the OTE Codes of Conduct, updated in 2005, which is linked to a dispute resolution system set up by OTE using independent arbitrators. However, it is important to bear in mind, that a large part of the suppliers, and probably most of the less serious traders, are not members of OTE³.

Questions:

a) *Do you agree with the description of the problem?*

Yes. And the OTE systematically fail to enforce their Code of Ethics

b) *Which measures could be undertaken to encourage the development of out- of- court dispute resolution systems?*

In the absence of a licensing scheme, an EU wide Timeshare Ombudsman scheme (compulsory on traders) could provide redress and reimbursement of monies

9. Criminal sanctions

Problem

As explained under section VII, serious infringements of the Directive should be dealt with under criminal law. National criminal law provisions regulating fraud should be applied.

A reflection on the proper mix of administrative, civil and penal sanctions that could be effective needs to be conducted. In particular, it has to be determined whether more effective enforcement could be obtained through enhanced use of penal sanctions related to infringements of concrete provisions of the Directive, and if harmonisation of

³ According to “Timeshare in Europe-2005 A report by the Timeshare Consumers Association” OTE members controlled 30% of the industry in 2004, the figure probably down one or two percentage points in 2005”.

sanctions at the EU level could be a way to reach consistency and effectiveness of the sanction regime related to timeshare, timeshare-like products and travel discount clubs.

Questions:

a) Do you agree with the description of the problem?

Yes although the current problem is the lack of enforcement of existing criminal sanctions.

b) Would you support the introduction of a provision whereby Member States are obliged to provide for criminal law sanctions to serious infringements of the Directive?

Yes.

10. Consumer awareness

Problem

Whilst information campaigns have raised awareness amongst consumers of possible problems related to “timeshare”, new products which are not covered by the Directive and the problems associated with them are not well known by consumers. There is obviously a need for raising awareness amongst consumers, not necessarily specifically related to “timeshare” or “travel discount clubs”, but rather to encourage consumers to study offers carefully, to think twice when the deal is “sign now, or it’s too late” and to consult legal expertise before signing contracts involving financial commitment of a considerable size.

Questions:

a) Do you agree with the description of the problem?

Yes. Additionally we would welcome the positive promotion of honest, serious, responsible traders.

b) Do you think further information campaigns could contribute substantially to improve consumer awareness? If yes, by whom and how should this information be organised?

Yes. Independent national consumer groups should be empowered and funded to provide awareness campaigns in their region in conjunction with responsible traders.

c) Do you have examples of information activities at national level which have been successful in raising consumer awareness?

We understand that a number of Scandinavian countries have arranged for the national airlines to carry warnings about timeshare problems. This appears to be economic, specific consumer targeting. Similarly, publicity about the dangers of smoking in the UK have been very effective.

d) Would you support an insertion in the Directive of a provision obliging Member States to inform consumers about the national laws transposing the Directive (like in the Distance Selling Directive (97/7/EC) Article 16) and encourage information

about codes of practice?

Yes.